

### **DETAILED ACTION**

Applicant's remarks with claim amendments submitted 04/28/2011 have been received and considered.

Claims 1, 2 and 4-19 are pending.

Claims 1, 2, 4-13 and 16-18 stand withdrawn from consideration.

**Claims 14, 15 and 19 are presented for examination on the merits.**

### ***Withdrawn Rejections***

The previous rejection under 35 U.S.C. 101 has been withdrawn in light of the amendments to the claims, which now require that the raw plant material is processed by a drying temperature between 80 °C and 105 °C and in light of the wikipedia.org entry provided by Applicants, which states that the highest recorded temperatures on earth are 57.8 °C and 70.7 °C. Therefore, the instantly claimed composition does not read on a product of nature.

The previous rejection under 35 U.S.C 102(b) has been withdrawn in light of the amendments to the claims, which now require that the raw plant material is processed by a drying temperature between 80 °C and 105 °C.

***New Rejections***

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 14-15 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Bischel et al. (US 4,938,974) with evidence provided by Wikipedia.org.

Bischel et al. teach sugar beet cossettes (i.e. slices) which have been immersed in a ferric chloride solution, passed through a cheese cloth to remove excess liquid and then dried in a laboratory oven at a temperature of 90°C for 16 hours (see e.g. col 9, lines 1-12). As evidenced by wikipedia.org, beets naturally contain both fat and protein. Therefore, the dried beets disclosed by Bischel et al. read on an orally ingestible composition in a form of a food product or nutritional supplement comprising raw beet plant material that has been processed by a drying process at a temperature between 80°C to 105°C to obtain glucosamine in an amount greater than 150 mg/kg, as instantly claimed. As evidenced by the instant specification, the process for generating glucosamine involves drying plant material at a temperature of 80°C to 105°C, preferably 92°C for 5 to 50 hours (see e.g. Specification page 11). Therefore, the dried,

sliced beets disclosed by Bischel et al. are processed by a drying process as instantly claimed.

It should be noted that the instant claims do not require that the instantly claimed orally ingestible product actually contains glucosamine in an amount greater than 150 mg/kg dry matter and only require that the plant material is processed at a temperature between 80°C to 105°C to obtain glucosamine in an amount greater than 150 mg/kg. However, since the composition disclosed by Bischel et al. is disclosed as being made in the manner instantly claimed and disclosed in the specification as being used for increasing the amount of glucosamine in plant material (i.e. by slicing and heating the plant material at a temperature of between 80°C to 105°C for 5-50 hours), it would be expected to contain this amount of glucosamine. Therefore, if the claims are amended such that they are drawn to a composition comprising 150 mg/kg of glucosamine, Bischel et al. would still anticipate the instant claims. Since the dried beet composition disclosed by Bischel et al. would be edible and since Bischel et al. disclose that the products are intended for human consumption (see e.g. col 4, lines 22-25), the iron enriched dried beet composition disclosed by Bischel et al. reads on an orally ingestible composition as instantly claimed. In addition, nothing would preclude one from using the dried beet composition disclosed by Bischel et al. as a skin or hair care product. The instantly claimed hair or skin care product does not require that the composition has a particular structure. Therefore, the composition disclosed by Bischel et al. could be used for hair or skin care, as instantly claimed.

Therefore, the reference is deemed to anticipate the instant claims above.

### ***Response to Arguments***

Applicant's arguments are directed to the withdrawn rejections. Those portions of Applicant's remarks which are pertinent to the new rejection above, which was necessitated by the amendments to the claims, will be addressed herein.

On page 7 of Applicant's remarks, Applicants state that the instant Specification teaches that greater than 150 mg/kg dry matter of glucosamine can be obtained when a plant material is harvested, cut and dried under the following conditions : (1) at a temperature 80°C to 105°C and (2) for 5 to 50 hours. Therefore, since Bischel et al. teach that beets were subjected to this process (i.e. heated for 90°C for 16 hours, the dried beets disclosed by Bischel et al. have been processed by a drying process to obtain glucosamine in an amount greater than 150 mg/kg dry matter, as instantly claimed.

### ***Conclusion***

No claim is allowed.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

Art Unit: 1655

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MELENIE MCCORMICK whose telephone number is (571)272-8037. The examiner can normally be reached on M-F 7:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terry McKelvey can be reached on 571-272-0775. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1655

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/Melenie McCormick/  
Primary Examiner, Art Unit 1655